

Date: June 12, 2006

To: National Organic Standards Board

Mark Bradley, NOP Deputy Administrator

Barbara Robinson, AMS Deputy Administrator

Re: Docket TM-05-14, pasture comments and answers to ANPR questions

Dear NOSB, Mr. Bradley, Ms. Robinson,

I address these comments on pasture to you all in descending order of responsibility and ascending order of authority. I also note and acknowledge that at this time the responsibility is no longer with the NOSB (though once it was), and the NOSB did provide considered guidance clarifications a couple of times as to what constitutes access to pasture. Unfortunately, between certain certifiers not paying attention--or not understanding or just plain not knowing (hard to believe)--and the NOP not using its authority to enforce certifier compliance on various issues, this topic is again before us. And, as is often the case when one 'lets things go till the last minute', we are faced with, basically, having to do what we should have done long ago, regardless of whether we change the Rule or not and that is enforce the Rule.

We/the NOP should have enforced the current pasture rule, with or without the NOSB's guidance statements over the years. The current rule provides sufficient and clear language in several places for exposition and enforcement of the pasture requirement. Only two certifiers to my knowledge (there may be more, it does not matter) out of over 50 have not applied the pasture rule correctly, the NOP has not corrected them, and under the shadows of undue, monied influence and the threat of legal battles, we/NOP have not done what we/NOP should have done in the first instance and that is require access to pasture according to the Rule.

The problem right now is that certain groups of individuals want to make the Rule more strict by inserting certain numbers into the Rule, thereby trying to ensure that larger herds are required to provide adequate pasture, where to date these larger herds have not provided adequate pasture. My concern is that by inserting these numbers (30% minimum dry matter intake from pasture and minimum 120 days on pasture), there will be a significant group of producers who will not be able to meet the numbers on an ongoing basis. This fact (I am one of those producers this year, due to my crop rotation, land limitations and other factors) plus the inordinate amount of record keeping and even more inordinate amount of certifier verification that will have to occur to keep track of the numbers makes the insertion of these numbers into the Rule an unwise thing to do.

With numbers in the Rule, the proverbial 'line in the sand' is drawn, and a certifier will have to initially issue notices of major non-compliance, followed by a notice of intent to deny or suspend certification, basically resulting in decertification of those operations who do not meet those numbers, even if they are close. This is not the overall intent nor premise of the Rule, and there will be many very good, smaller family scale farms who will be caught by this line in the sand, when their overall management efforts--including pasture management--reflect excellent organic farming practices.

These same groups of individuals are claiming to speak for most if not all dairy farmers, citing a survey done by the Cornucopia Institute which claims 99% of dairy farmers want numbers in the Rule and citing the aegis of various organizations purporting to speak for all dairy farmers (mainly the three organic dairy producer associations in the Northeast, Midwest, and West, NODPA, MODPA and WODPA) and who also claim all their members want the numbers in the Rule. While I am involved with all three of these groups (membership/contributions) and know and respect all the fine folks in these groups, I also know how group dynamics works, and I know that not all of the members of these groups want these numbers in the Rule.

While I also appreciate their commitment and zeal and the pasturing/record keeping that they say they do, I do not appreciate nor do I agree with their solution, ie, that all dairies must meet certain numbers (30% dmi/120 days) or they cannot be organic dairies. The Cornucopia Institute's survey did not include the bulk of dairy farmers in the Midwest, and a separate survey done of these producers (290 dairy farms) revealed clearly that while pasturing is overwhelmingly/unanimously accepted as a required management tool, to require a certain amount via numbers is not unanimously accepted as the way to do it. Significant concerns were expressed about just this point: 'What if I cannot meet the numbers, for some reason?'

One of the major concerns along these lines is the amount of land available to different dairy operators and the choices they have to make to manage the overall operation. Devoting more land to pasture (in the Midwest) means that less stored feed will be able to be raised for the winter months, and more purchased feed will have to be brought in (and how sustainable is that?) Many operations lack adequate land base to meet the proposed numbers, thus they would be faced with not being in

compliance or putting most or all of their land into pasture and having to purchase feed. One may say that, 'Well, putting the cows out on pasture means you need that much less feed, anyway, so, you won't have to buy any extra feed and/or you won't need extra land.'

The complexities of farming in general and organic livestock production in particular (what to speak of running and maintaining a financially successful business) all combine, though, to make the above statement not quite as simple and straightforward as it sounds. Organic feeds are expensive, so raising them is what most producers want to do/try to do. Mandating minimum numbers for pasturing without regard to land base or other management factors affecting being able to meet and maintain those numbers is not the spirit of the Rule, nor is it a wise way to address a perceived compliance problem in a production-based Rule. The Rule must work for all operators and not be discriminatory in its application. The more numbers are used to define a production-based Rule, the more chance there is that operators will either fall above or below those numbers, regardless of their overall organic management practices otherwise.

Again and again the question is raised, 'Why are some larger dairy farms allowed to get certified without adequate pasture?' The answer lies in the certification process, not in making the Rule stricter.

I am not going to specifically address the questions that you have asked. They are lengthy, many respondents are providing considered information (though unavoidably from their own bias), and I just think we are getting off base in trying to figure out how to do it right when the simple and immediate answer lies in enforcing the current standards, primarily via accreditation.

The current standards regarding pasture provide adequate recourse and ability (empowerment) of the certification agency to verify compliance of an organic livestock operator with ruminants as regards access to pasture.

The basic pasture standard (§205.239(a)(2)) states: *The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:....Access to pasture for ruminants.*

"Must" means has to, is required to, very simple and legally binding.

"Access" means the ruminant is able to go somewhere, is able to access something.

"Pasture" is where the critter goes. Pasture is further defined in the Rule as: *Land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water and vegetative resources.*

Thus, the phrase '...must...(have)...access to pasture...' very clearly means the cow/ruminant must be able to go to land used for grazing and get feed value from that land and that that land must be managed in such a way that there is ongoing (maintained) feed value there in the future. Why this has not been properly applied and enforced by certain certifiers is not a good thing, the NOP should have monitored this, and these lackings have resulted in the organic dairy community heading in a direction that will ultimately be to the detriment of a significant number of good organic dairy producers.

Thus, when an organic inspector goes to a ruminant livestock farm, there must be access to pasture. If the inspector does not see access to pasture, then that will have to be documented, and the certifier will have to consider that documentation. Farms who have access to pasture will have a system of lanes and gates and high tensile perimeter fencing and interior fencing (can be high tensile or polywire) all geared to getting cattle out to pasture ground and providing a grazing experience for the animals. Different farms will manage all of this in different little ways (eg, availability of water, type of fencing, etc), but in general, this system of fencing and lanes and gates are required to move cattle from one place to the other on a farm in order to pasture the cattle. A minimum number of dmi or days on pasture is secondary. Let the cows and the operator figure out how to best make the system work. The main thing an inspector and a certifier need to see is that the system is there and that there are plans for continuous improvement.

Concerning the question how much pasture is to be provided for the ruminants, the current pasture standard provides a certifier with the ability to determine not only compliance with the access to pasture for ruminants requirement, but also the ability to determine the amount of pasture needed in that operation.

The words in the pasture definition--and, remember, ruminants must have access to pasture--state that pasture is “Land that is used for livestock grazing and that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.” To manage is the active/verb form of the noun management, and just as one manages many things on a farm (cow comfort, health, feeding and milking schedules and so on) on an on going basis, so, too, is pasture to be managed.

There will be times and situations where the amount of pasture is deemed/determined by the certifier to be not enough, and this, then, must be worked out between the certifier and the operator on a continuous improvement basis, just as other management requirements and recommendations are similarly handled between a certifier and an operator (eg, record keeping, machinery maintenance, buffers, facilities, crop rotations, organic seed compliance, and so on.) This continuous improvement approach is a basic management premise of organics, while dictating numbers and amounts of one thing or another in the Rule is not and has not been an accepted approach.

What if we required a certain age of tractor on all farms to address potential leaking problems or required minimum square footage for poultry facilities or required a minimum number of days a crop has to mature or required minimum numbers for feed/food quality or required any number of numbers that one interest group or another wants to put in the Rule to address perceived problems? Numbers in the Rule are to be avoided, and there are notably very few there right now. There are usually other ways to make it work.

In sum, large or small herds without sufficient pasture management in place are required to have sufficient pasture management in place and all herds must be brought to that point on a continuous improvement basis, in a reasonable and mutually agreed upon time frame that the certifier and operator determine via the organic system plan on an annual basis.

If a certifier is not requiring this kind of pasture management of all ruminant livestock producers, then that certifier is not doing their job, and they are jeopardizing the overall integrity of the organic label and should be held accountable via the accreditation process.

I am speaking as both an organic dairy farmer (18 years - been farming for 29 years) and as a certifier (17 years.) The current rule is just fine and the NOP needs to enforce it appropriately.

Thank you for your efforts. Your astute consideration for the benefit of all of us is appreciated.

Respectfully,

David Engel, dairy farmer
Executive Director, Nature's International Certification Services